UNREPORTABLE

IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ WP(C)14193/2006

% **Date of Decision : May 31, 2007**

\# Ex-Constable Balwinder Kumar **Petitioner**

! Through: Mr.Prakash Gautam, Advocate

Versus

$ **Union of India & Ors.** **Respondents**

^ Through: Ms.Barkha Babbar, Advocate

CORAM:-

*** HON'BLE MR. JUSTICE T.S. THAKUR**

HON'BLE MR. JUSTICE S.N. AGGARWAL

1.Whether reporters of Local paper may be allowed to see the judgment?

2.To be referred to the reporter or not?

3.Whether the judgment should be reported in the Digest?

Per S.N. AGGARWAL, J.

1. The petitioner in this writ of certiorari has called in question his dismissal from service of CISF vide impugned orders dated 13.5.1998 and

21.6.2006 and for directions to the respondents to reinstate him in service with all consequential benefits.

2. The brief facts of the case giving rise to this petition are as follows:-

3. The petitioner was enrolled as a Constable in CISF Unit on 2.1.1987 and while posted at CISF Unit, HDC, Haldia was chargesheeted under Rule 34 of CISF Rules, 1969 by Commandant, CISF Unit, Haldia Dock Complex, Haldia vide charge memorandum No. V-15016/CISFHDC/Maj/DISC/2060 dated 9.6.1997. The charges framed against him were to the following effect:-

> "**Charge-I**
> No.874380295 Const. Balwainder Kumar of CISF unit HDC Haldia is charged with act of gross misconduct, indiscipline and moral turpitude in that he offered to take Smt, Basanti Singha Roy w/o Carpenter A.S.Roy to cinema on 26.05.97 and entered into the room No.1/65/66 of Carpenter A.S.Roy on 27.05.97

and grabbed her hand and dragged her towards the door thereby outraging the modesty of the lady in absence of her husband.

Charge-II

No.874380295 Const.Balwinder Kumar of CISF Unit, HDC Haldia is charged with an act of gross indiscipline and insubordination in that he was living in the family accommodation without family and disobeyed the lawful order of his superiors by not vacating the family quarter inspite of giving instructions."

4. The petitioner gave reply to the above charges on 16.6.97 but the same was not found satisfactory and, therefore, the disciplinary authority appointed Inspector/Exe A.Jena as Enquiry Officer on 19.6.97 to enquire into the above charges levelled against the petitioner. During the course of enquiry, four witnesses were examined by the department and the statement of petitioner was also recorded by the Enquiry Officer. The Enquiry Officer submitted his report to the disciplinary authority on 27.6.97 holding the petitioner guilty

of both the above mentioned charges. The disciplinary authority i.e the Commandant, CISF, HDC Haldia having agreed with the findings of the Enquiry Officer, provided a copy of the enquiry report to the petitioner vide letter dated 28.6.97 to which he filed his representation against the findings of the Enquiry Officer. The petitioner mentioned in his representation against the findings of the Enquiry Officer that he was satisfied with the enquiry and assured that he would not commit any such mistake in future which may attract disciplinary action against him. He prayed for taking a lenient view while imposing punishment on him. The Commandant of the petitioner being his disciplinary authority awarded the penalty of reduction of pay by two stages from Rs.980 to Rs.940 in the time-scale of Rs.825-15-900EB-20-1200 for a period of two years with a direction that the petitioner would earn his

increment during the period of reduction in his pay and that on expiry of the period of two years, the reduction will not have the effect of postponement his future increment. As the petitioner was placed under suspension w.e.f 28.5.97, the disciplinary authority also ordered that the period of his suspension w.e.f 28.5.97 to the date of issue of final order would be treated as such which would not be counted towards his qualifying service and further that the petitioner would not be eligible for more than what he has already drawn towards salary during the period of his suspension as subsistence allowance.

5. DIG/NEZ, Calcutta being the superior authority to the disciplinary authority suo moto reviewed the case and found that the quantum of punishment awarded by the disciplinary authority to the petitioner is not commensurate with the gravity of the misconduct of moral turpitude proved against

him and, therefore, needs to be enhanced. The DIG/NEZ in exercise of his powers conferred upon him under Rule 29(A) Schedule-II of CISF Rules read with Rule 49(2) enhanced the punishment from reduction of pay to dismissal from service. The said order of the reviewing authority is Annexure P-2 to the present petition. The relevant portion of the order of the reviewing authority is reproduced herein below:-

> "5. I have gone through the records. The lady Smt.Roy has very clearly stated that she had been once offered Haryana the delinquent for a cinema. She had snubbed him. Again next day he wanted to forcibly take her to a cinema and a lunch. He dragged her and when she shouted for help, she was able to release herself from his clutches and escape in the confines of her flat. Her statement is quite clear and complete. Her conduct is not telling the neighbours after the incident and wait for her husband to return looks quite natural. Since she had shouted for help and fearing that public

will gather or labourers working nearby will gather, the delinquent had probably loosened his grip and thus even before the neighbours could gather or came to her rescue, due to his released grip, the lady was able to get away from his clutches and escape to her room. Since she was able to go back to her room even before help could came, it was quite natural for her to keep herself closed in the room and wait for her husband, rather than open the room, come out of it and start narrating the incident to every one and create a more unpleasant scene for herself. Her conduct has been absolutely natural and the plea of the delinquent has no weight.

6. His plea that no man can forcibly drag a woman to a public place for cinema, looks correct as no man can keep dragged a woman on roads, cinemahalls and restaurants and make her see film and eat food in restaurants while he keeps dragging her. Obviously the delinquent knews it is not possible. But his misconduct has been that he dragged her from her room out of it to force her to go with him. This is certainly possible and the delinquent appears to have done

it. The statement of the lady Smt.Roy is sufficient to prove it.

7. I consider the statement of Smt.Roy Completely truthful and natural. Her conduct has also been absolutely natural. Obviously there would not have been any public witnesses to this incident, so otherwise the delinquent would not have dared to do so.
8. The lady Smt.Roy has only recently joined with her husband. She had obviously no ill motive about the delinquent to lodge a false complaint against him. Unless the incident had occurred, as narrated by her, that the delinquent tried to outrage her modesty, she would not have reported it. No Indian women will do it, unless she had suffered so such, that she can not bear it any more and feels her tormentor will continues to do so. Since she knew that unless the matter is reported, the delinquent is not going to restrain himself, she had lodged the complaint.
9. Since presence of such persons in Force whose presence can make the life of families and women unsafe, I believe they are not fit to be retained with

> uniformed force. If delinquent had no respect for the wife of a colleague, the modesty of any other woman around, was not safe. Such persons bring bad name to the Force and people lose faith in Khaki uniform. This can not be allowed and has to be dealt with sternly. He does not deserve sympathy. Therefore, in exercise of powers conferred upon me under Rule 29(A) Schedule-II of CISF Rules read with Rule 49(2). I hereby award the enhanced penalty of "DISMISSAL FROM SERVICES" upon No. 874380295 Constable Balwinder Kumar of CISF 2nd Res. Block No. 13, CGO Complex, Delhi with immediate effect."

6. The reviewing authority while enhancing the punishment as stated above, gave liberty to the petitioner to file an appeal against his order to the appellate authority, if he so desires, within thirty days of the receipt of the review order. Aggrieved, by the aforesaid order of the reviewing authority, the petitioner preferred an appeal to the Director-General of Police and as the said

appeal was not decided, the petitioner filed a writ petition (CWP No. 5434/1998) in this Court which was disposed of vide order dated 25.5.2006 (Annexure P-6) directing the appellate authority to dispose of the appeal of the petitioner by a speaking order within four weeks from the date of personal hearing to be given to him within two weeks from the date of the order. Pursuant to directions of this Court, the appellate authority vide its order dated 21.6.2006 dismissed the appeal of the petitioner against the order dated 13.5.1998 of the reviewing authority. The order of the appellate authority is Annexure P-1 at Pages 23 to 29 of the paper book. Aggrieved by the dismissal of his appeal by the appellate authority, the petitioner has preferred this appeal and has prayed for a writ of certiorari quashing the impugned order dated 13.5.1998 and also the order of the appellate authority dated 21.6.2006 and for

directions to the respondents to reinstate him in service with all consequential benefits.

7. In response to notice of this writ petition, the respondents have filed their counter affidavit and have justified the dismissal of the petitioner from service in view of charge of misconduct involving moral turpitude proved against him. The respondents have prayed for dismissal of this writ petition.

8. We have heard the learned counsel for the parties and have also perused the record.

9. The learned counsel appearing on behalf of the petitioner had attacked the impugned orders on the ground of double jeopardy. It was contended by him that the petitioner could not have been removed from service by the reviewing authority once the disciplinary authority had awarded punishment of reduction of pay by two stages on the charges proved against him. It was also contended that the

petitioner has put an unblemished service for more than ten years before he was charged for the offence of moral turpitude regarding misbehaviour with the wife of his own colleague. During arguments, the learned counsel did not point out any procedural infirmity in the decision making process that led to the dismissal of the petitioner from service. We have given our careful consideration to the facts of the case and also the legal plea of double jeopardy raised on behalf of the petitioner. In our view, the plea of double jeopardy urged on behalf of the petitioner is wholly misplaced. The Commandant under whom the petitioner was working at the relevant time was the disciplinary authority of the petitioner. The petitioner was charged for misbehaving with the wife of his own colleague and the said charge stood proved against him in the departmental enquiry. We have seen the original file of the enquiry and on a

perusal of the same we have found that four witnesses including the lady with whom the misbehaviour had taken place were examined and they all were also cross-examined by the petitioner. The statement of the petitioner was also recorded during the enquiry and the charges levelled against him stood duly proved from the statement of the lady as well as the statement of the petitioner himself. It is borne out from the record that the petitioner had admitted his mistake in his representation dated 28.6.1997 and had assured the disciplinary authority not to commit such a mistake in the future. The reviewing authority as well as the appellate authority have both taken this aspect of the matter into consideration. The relevant portion of the order of the appellate authority on this aspect is reproduced herein below:-

> "On going through the entire case file, I find from the evidence adduced during the course of

> enquiry that it has been established beyond doubt that appellant offered to take Smt Basanti Singha Roy to a Cinema on 26.05.97. In absence of her husband, the appellant again entered her room on 27.05.97, grabbed her hand and dragged her towards the door. Further, from the deposition of HC/GD G.Ramesh, CHM(PW-III), it has been circumstantially established that the appellant managed night duty continuously for 09 days in order to remain present in the daytime in the absence of lady's husband. Moreover, the appellant has admitted his mistake as per his representation dated 28.06.97, submitted against the Enquiry Report and has assured the Disciplinary Authority not to commit such a mistake in the future. This proves the guilt and involvement of the appellant in the said incident."

10. We do not find any merit in the contention of the petitioner's learned counsel that the dismissal of the petitioner from service is vitiated on account of double jeopardy. We have carefully gone through the order of the reviewing

authority dated 13.5.1998. The said order was passed by the reviewing authority in exercise of its powers under Rule 29(A) Schedule-II of CISF Rules r/w Rule 49(2). Rule 49(2) of CISF Rules, 1969 is extracted below:-

> "49(2) The revising authority may remit, vary or enhance the punishment imposed, or may order a fresh inquiry or the taking of further evidence in the case as it may consider necessary."

11. A plain reading of the above rule would show that the DIG/NEZ being the superior authority to the disciplinary authority of the petitioner was well within his right to review the case and enhance the punishment. The question is, if the reviewing authority had the power to review the decision of the disciplinary authority, whether exercise of such power by him can be said to be vitiated by double jeopardy. Answer to this question would be in the negative. The act of

misbehaviour committed by the petitioner with the wife of his own colleague constitutes a grave misconduct. Such a misconduct on the part of the petitioner as member of the disciplined armed force had the effect of bringing a bad name to the uniformed force and its gravity gets compounded as the offence was done by a person in Khaki uniform. We are of the view that the reviewing authority as well as the appellate authority were justified in their view that to allow such persons like the petitioner to remain in the uniformed force would be a stigma to the organisation which is supposed to act as a protector of life and property.

12. In view of the above, we do not find any merit in this writ petition which fails and is hereby dismissed but in the circumstances without any order as to costs.

S.N.AGGARWAL

(JUDGE)

May 31, 2007 **T.S.THAKUR**
'mb' **(JUDGE)**